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Swiss Criminal Law

Prof. Dr. iur. Nadine Zurkinden

Universität Zürich[UZH]

Translated Legislation

Federal Constitution of the Swiss Confederation
https://www.admin.ch/opc/en/classified-compilation/19995395/index.html

Swiss Criminal Code
https://www.admin.ch/opc/en/classified-compilation/19370083/index.html
Swiss Criminal Procedure Code
https://www.admin.ch/opc/en/classified-compilation/20052319/index.html

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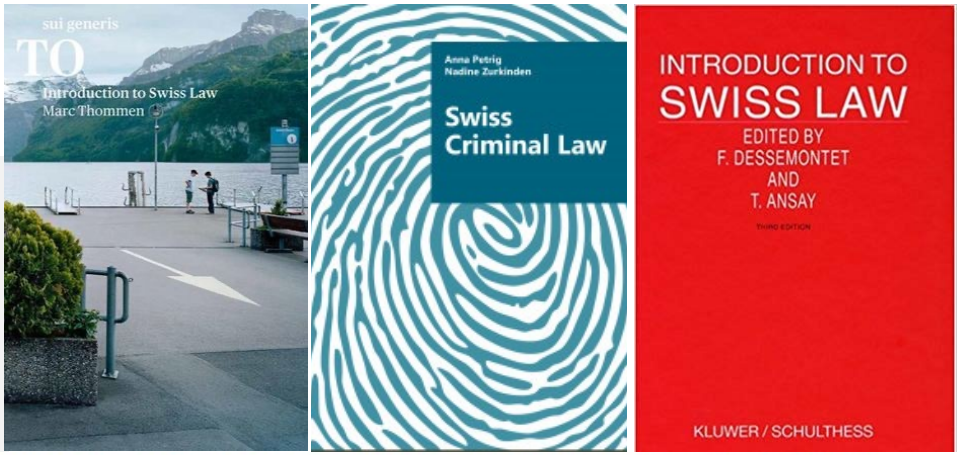
Literature in English

- Marc Thommen, Introduction to Swiss Law, Zurich 2022
- Anna Petrig/Nadine Zurkinden, Swiss Criminal Law, Zurich 2015
- François Dessemontet/Tugrul Ansay (eds.), Introduction to Swiss Law, 3rd ed., The Hague 2004
- Max Planck Information System for Comparative Criminal Law: Infocrim.org



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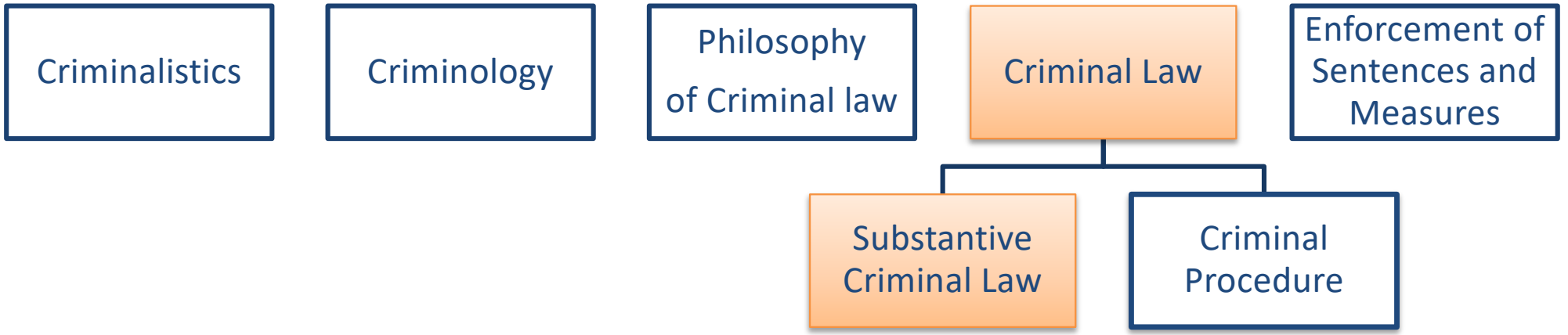

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Case Examples 1/2

- X hikes in the nudes in the beautiful canton Appenzell.
- 16 year old climate activist daubes a bank building to protest against the bank's investments in fossil fuels.
- Swiss fighter jet pilot causes crash by failing to respect the rules for minimum flight altitudes for combat and training exercises.

SRF

Vasily Koloda on Unsplash

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Case Examples 2/2

- X causes car crash because she diregards the right of way. A child is hurt.
- «Monster of Rupperswil» abuses and kills child. He also kills mother, brother and brother's girlfriend. He suffers from mental disorders.

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Marloes Hilckmann, Unsplash

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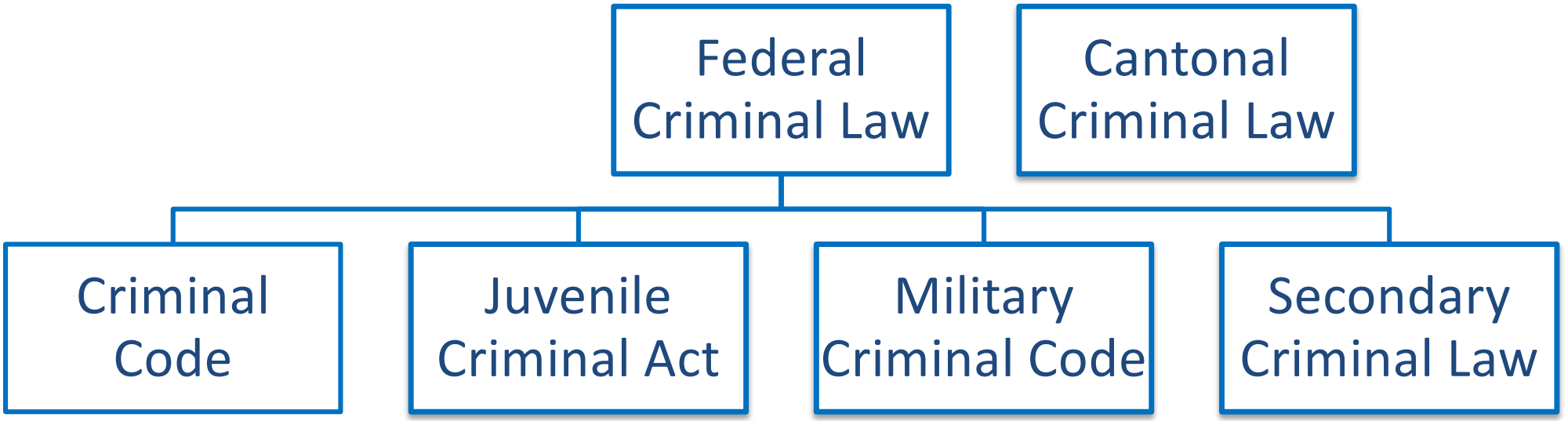
Swiss Substantive Criminal Law



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Federal Criminal Law

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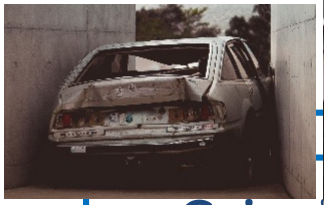

Crimi Code

nile Criminal Act

Military

Secondary Criminal Law

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Swiss Crimi[illegible]

General Part
Art. 1-110

Specific Part
Art. 111-332

Third Part:
Introduction of Code

Criminal Liability
Art. 1-33

Sanctions
(sentences/measures)
Art. 34-73

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General Part I – Art. 1-33 CC

General Provisions on Criminal Liability that apply to all offences

- Territorial Application
- Crime Categories
- Intention/Negligence
- Excuses/Defences
- Law on Attempts
- Participation/Complicity

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   - Felonies or misdemeanours in Switzerland — Art. 3
   - Felonies or misdemeanours against the state committed abroad — Art. 4
   - Offences against minors abroad — Art. 5
   - Offences committed abroad prosecuted in terms of an international obligation — Art. 6
   - Other offences committed abroad — Art. 7
   - Place of commission — Art. 8
4. Personal scope of application — Art. 9

Title Two: Criminal Liability

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2. Intention and negligence.
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   - Doubt as to legal responsibility — Art. 20
   - Error as to unlawfulness — Art. 21
4. Attempts.
   - Criminal liability for attempts — Art. 22
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General Part
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Third Part:
Introduction of Code

Criminal Liability

Art. 1-33

Sanctions (sentences/measures)

Art. 34-73

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E.g.: Art. 53 Reparation

- Reparation
- **Art. 53**[44]

If the offender has made reparation for the loss, damage or injury or made every reasonable effort to right the wrong that they have caused, the competent authority shall refrain from prosecuting them, bringing them to court or punishing them if:

a. a suspended custodial sentence not exceeding one year, a suspended monetary penalty or a fine are suitable as a penalty;

b. the interest in prosecution of the general public and of the persons harmed are negligible; and

c. the offender has admitted the offence.

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General Part
Art. 1-110

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Introduction of Code

Criminal Liability

Art. 1-33

Sanctions
(sentences/measures)

Art. 34-73

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Specific Criminal Acts

Life and Limb (Art. 111 ff.)
Property (Art. 137 ff.)
Personal Honour (Art. 173 ff.)
Liberty (Art. 180 ff.)
Sexual Integrity (Art. 187 ff.)
Family (Art. 213 ff.)
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Counterfeiting of Money (Art. 240 ff.)
Forgery (Art. 251 ff.)
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Genocide, Crimes against Humanity, War Crimes (Art. 264 ff.)
State and National Security (Art. 265 ff.)
Will of the People (Art. 279 ff.)
Official Powers (Art. 285 ff.)
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How do the different parts work together?

Article 125 SCC

Any person who causes injury to the person or the health of another through negligence shall be liable on complaint to a custodial sentence not exceeding three years or to a monetary penalty.

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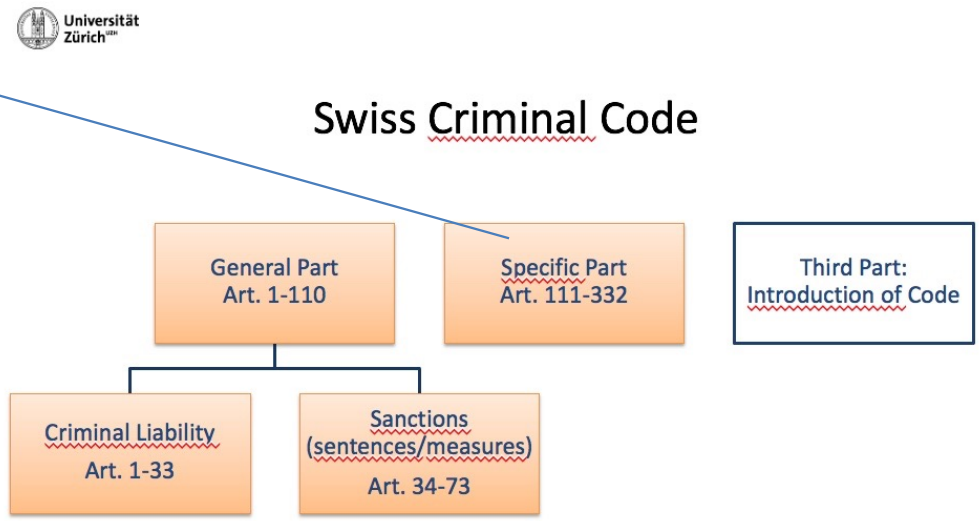

How do the different parts work together?

Article 125 SCC

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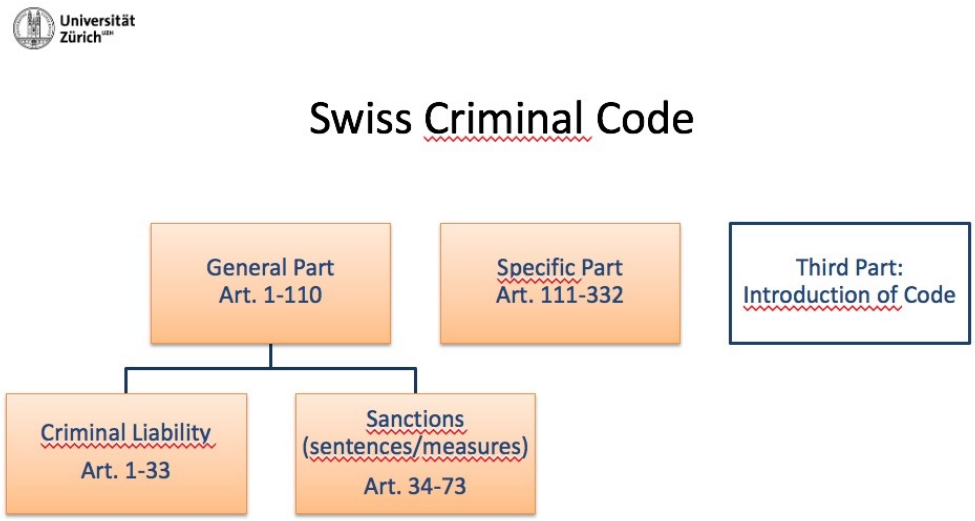
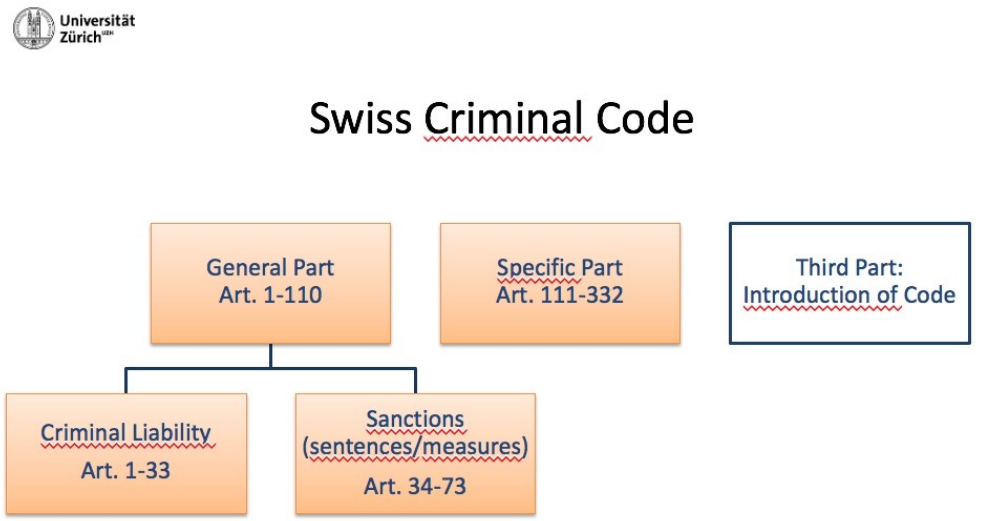


How do the different parts work together?

Article 12 SCC – definitions

3 A person commits a felony or misdemeanour through **negligence** if that person **fails to consider or disregards the consequences of their conduct due to a culpable lack of care**. A lack of care is culpable if the person **fails to exercise the care that is incumbent on them in the circumstances and commensurate with their personal capabilities**.



Gareth Harrison, Unsplash

How do the different parts work together?

Article 125 SCC

Any person who causes injury to the person or the health of another through negligence **shall be liable on complaint to a custodial sentence not exceeding three years or to a monetary penalty.**

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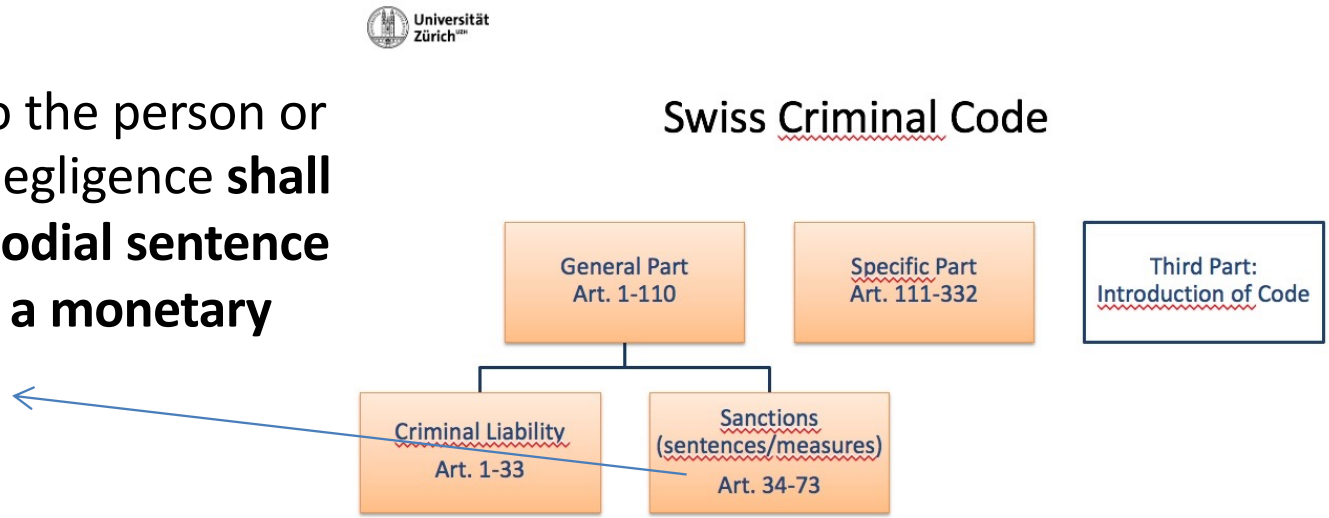

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Article 122 Serious Assault

- 3. Assault
- Serious assault
- Art. 122[173]

Any person who wilfully:

a. inflicts a life-threatening injury on another;

b. inflicts a serious injury on the person, or on an important organ or limb of another, makes an important organ or limb unusable, makes another permanently unfit for work, infirm or mentally ill, or who disfigures the face of another badly and permanently;

c. causes any other serious damage to the person or to the physical or mental health of another,

shall be liable to a custodial sentence of from one year to ten years.

[173] Amended by No I 1 of the FA of 17 Dec. 2021 on the Harmonisation of Sentencing Policy, in force since 1 July 2023 (AS **2023** 259; BBl **2018** 2827).

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Article 123 Common Assault

– Common assault

– Art. 123[174]

1. Any person who wilfully causes injury to the person or the health of another in any other way shall be liable on complaint to a custodial sentence not exceeding three years or to a monetary penalty.

...[175] [176]

2. The offender shall be prosecuted *ex officio*,[177]

if they use poison, a weapon or a dangerous object,

if they commit the act on a person, and in particular on a child, who is unable to defend themselves, or is under their protection or in their care.

if they are the spouse of the victim and the act was committed during the marriage or up to one year after divorce,[178]

if they are the registered partner of the victim and the offence was committed during the period of the registered partnership or up to a year after its dissolution,[179] or

if they are the heterosexual or homosexual partner of the victim provided they have at any time cohabited, and the act was committed at that time or up to one year after separation.[180]

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Article 125 Assault through negligence

- **Assault through negligence**
- **Art. 125**

[1] Any person who causes injury to the person or the health of another through negligence shall be liable on complaint to a custodial sentence not exceeding three years or to a monetary penalty.[183]

[2] If the injury is serious, the offender shall be prosecuted *ex officio*.

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Criminal Liability for intentional offences

Elements of Crime	Objective Elements	Subjective Elements	
	- Offender - Object of the Crime - Act - Result - Causation	- Direct Intent - Conditional Intent	Objective Wrong
Unlawfulness	Justification - Self-Defence - Necessity - Consent	- Knowledge (of threat) - Will (to defend)	Objective Wrong
Culpability	- Criminal Responsibility - Error of Law - Unreasonableness		Subjective Blame

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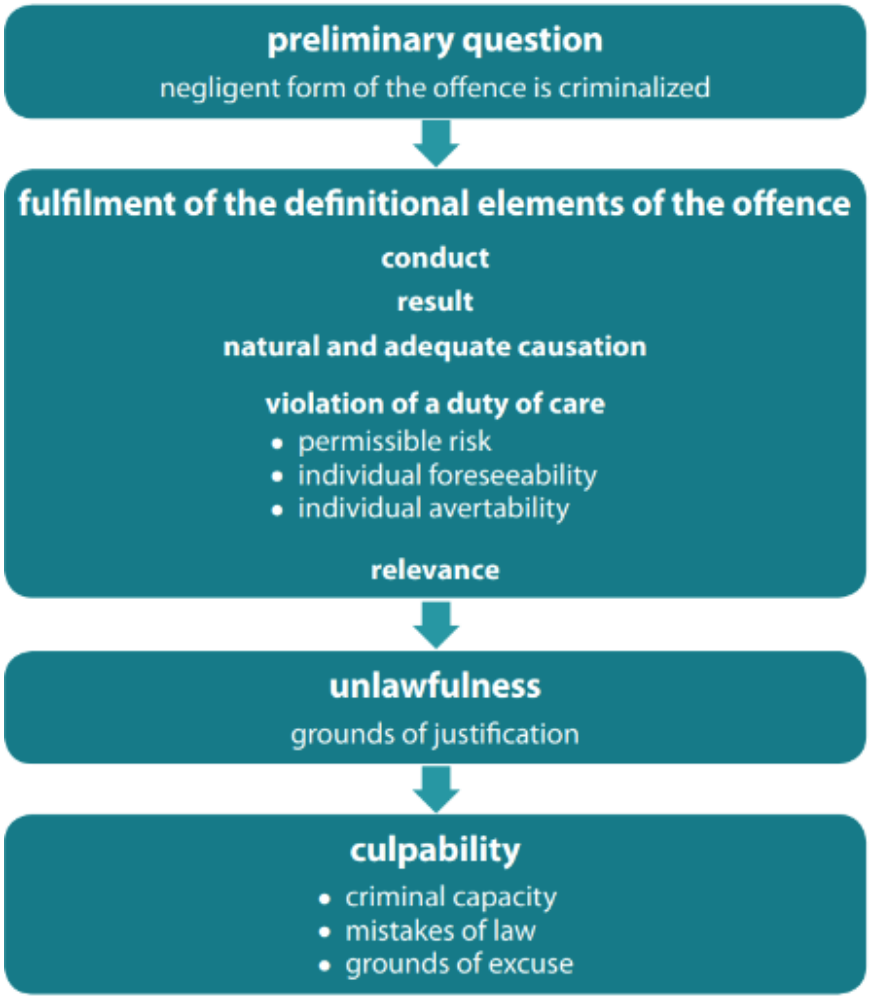
Criminal Liability for negligent offences



Source: Swiss Criminal Law, Anna Petrig/Nadine Zurkinden p. 112

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General Part; e.g. sanctions

Article 125 SCC

Any person who causes injury to the person or the health of another through negligence **shall be liable on complaint to a custodial sentence not exceeding three years or to a monetary penalty.**

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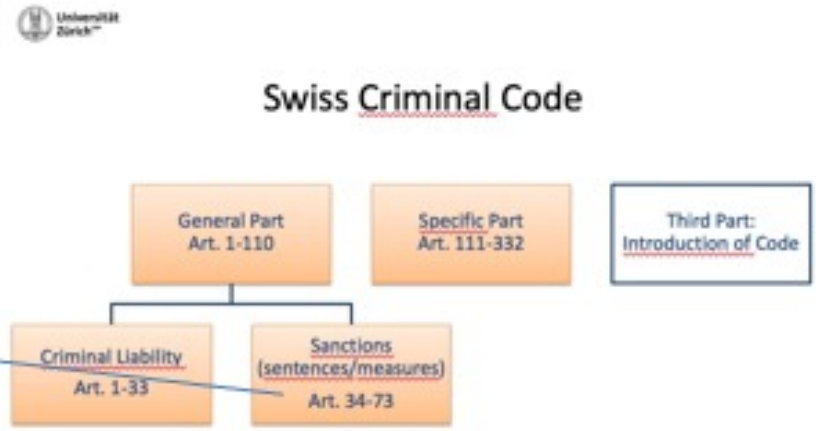

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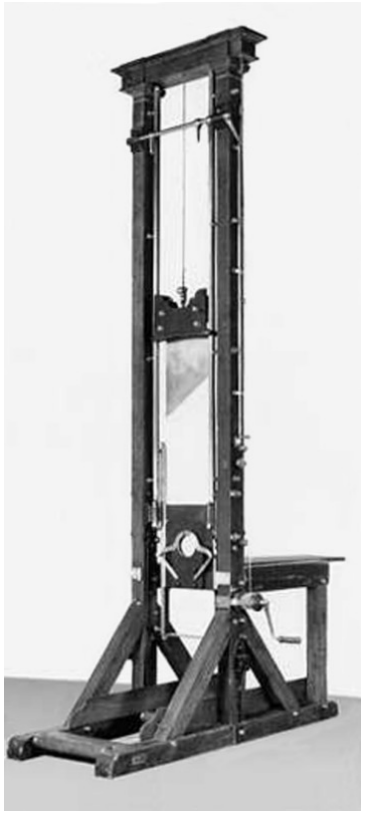
Death penalty is history

13 June 1782: Anna Göldi(n) > last person executed/behead-ed for witchcraft in Europe.

Fictional portrait by Patrick Lo Giudice

18 October 1940: Hans Vollenweider > Last person executed in Switzerland



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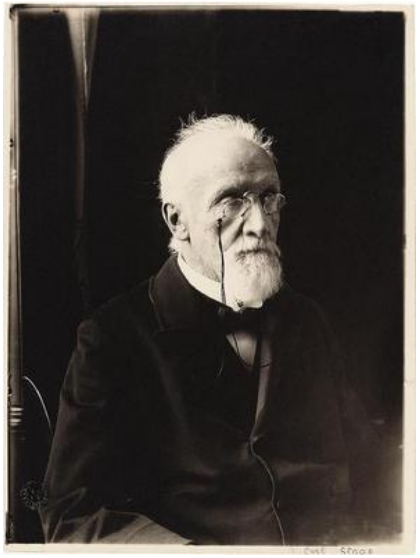
Carl Stooss (1849-1934)

- His dual system of sanctions

  → Sentences and Measures

  had great influence on legal systems of other european countries



Carl Stooss (1849-1934)

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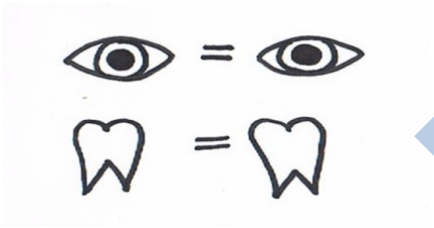
Dual System of Sanctions

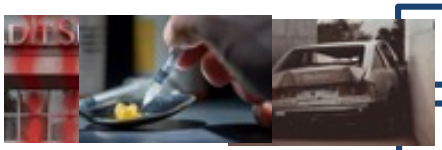


Retribution

Prevention

Sentences

Measures



- Sanctions
  - Sentences
    - Monetary penalty Art. 34
    - Custodial sentence Art. 40 f.
    - Fines Art. 106
    - * Community Service
    - Death penalty / corporal punishment
  - Measures
    - Protective measures
      - Thearapy
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        - In-patient treatment of addiction Art. 60
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        - Asset Forfeiture Art. 70 ff.
        - Use for the benefit of the person harmed Art. 73

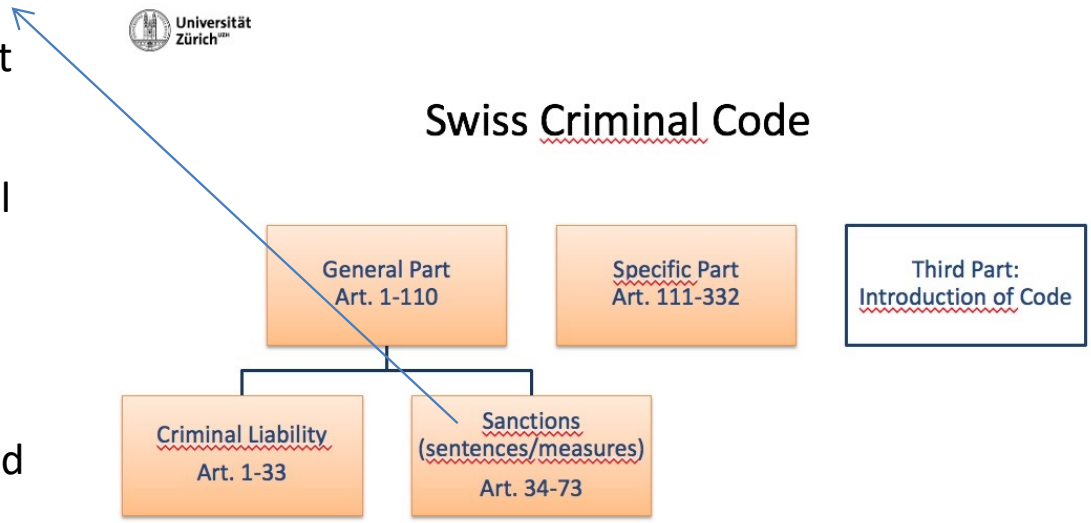
* Community service is not a separate type of sentence. However all sentences up to 6 months can be converted into community service (Art. 79*a*).

Art. 57 – Relationship between measures and sentences

[1] If the requirements for both a penalty [sentence] and a measure are fulfilled, the court shall order both sanctions.

[2] The implementation of a measure under Articles 59-61 takes precedence over a custodial sentence that is imposed at the same time or which is executed through revocation of a suspended sentence or recall to custody. Likewise, the reactivation of the execution of a measure in accordance with Article 62*a* takes precedence over a cumulative sentence imposed at the same time.

[3] The deprivation of liberty associated with the measure must be taken into account in determining the penalty [sentence].



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„Firewalk“ case (2022)

Questions:

- Which offence provided for by the Criminal Code could have been commited?
- What are possible defences?
- If guilty: what sanctions could be imposed?
- Is there a possibility of exempting punishment?

Twenty-five people were injured after attempting “fire walking” during an office teambuilding exercise near Lake Zurich. 13 people were taken to the local hospital for treatment as they suffered severe burns while the remaining were treated on the spot.

Police said that the group had been asked to walk over a bed of glowing coals barefoot as part of an exercise. The bed of coals appeared to be several metres long.

Police have launched an investigation into the matter and are looking at whether there was an issue with the set-up of the coals or whether it had something to do with how the participants walked over it.

Fire-walking or walking on glowing coals is often used as a motivational exercise or as a personal challenge.

The event was organised by an advertising marketing company. The company’s spokesperson said: “The fire walk was voluntary. The message on site was: Nobody is forced, everything is voluntary.”

source: The Independent (United Kingdom), June 17, 2022

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Case: Firewalk (2007)
BGE 134 IV 149

Source: NZZ

- X and Y organized a firewalking seminar attended by the women‘s floorball team of A.
- Signed Informed consent: Risks of firewalking, personal responsibility, liability waiver
- A, who was the first to walk across it, suffered second-degree burns on the soles of her feet, and several others sustained minor burns.

Questions:

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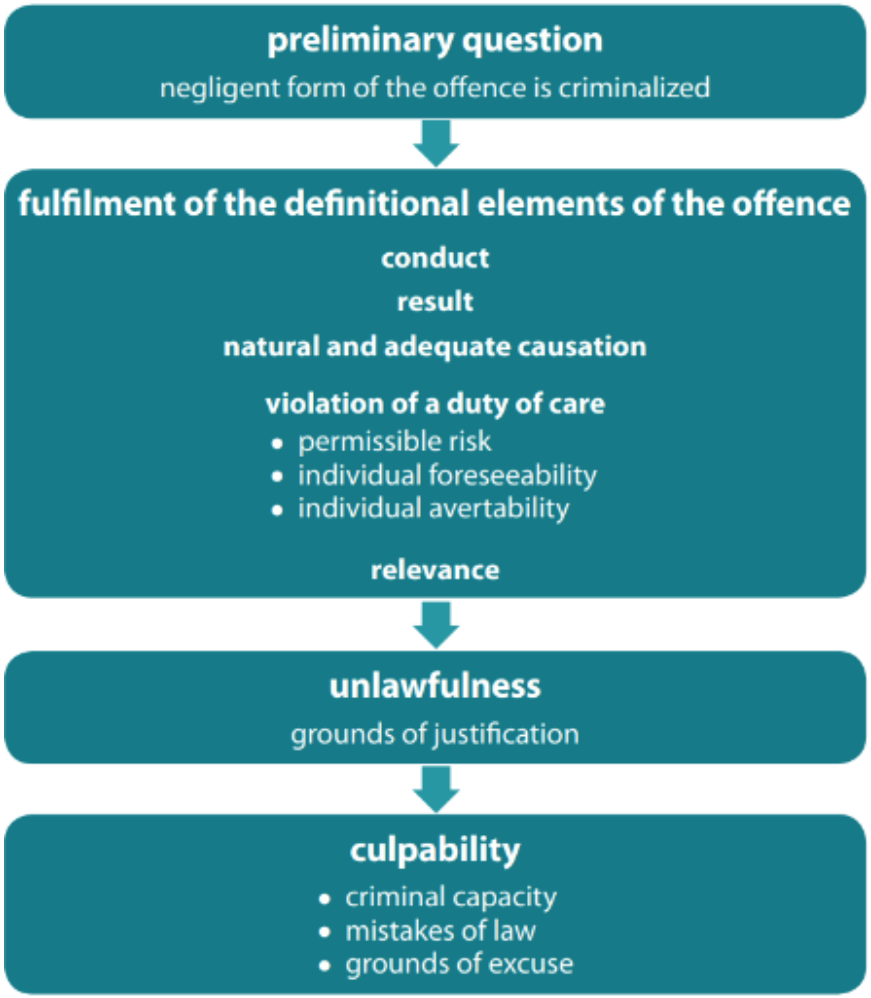
Criminal Liability for negligent offences



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Violation of duty of care/ Permissible risk:

- Did A voluntarily and with a fundamental awarness accept an increased risk when walkimg across the „fire“?
- Who had control over the act? (“Tatherrschaft”) Who had control over the final act that directly led to the injury on the participants feet?
- Do the organizers possess superior knowledge, or did they recognize that the participants do not fully comprehend the implication of their decision?

Source: NZZ

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What sanction could be imposed?

- **Assault through negligence**
- **Art. 125**

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[2] If the injury is serious, the offender shall be prosecuted *ex officio*.

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Is there a possibility of exempting punishment?

- Reparation
- Art. 53[44]

If the offender has made reparation for the loss, damage or injury or made every reasonable effort to right the wrong that they have caused, the competent authority shall refrain from prosecuting them, bringing them to court or punishing them if:

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